



THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Linda Roskin

Serial No.: 09/874,031

Filed: June 06, 2001

For: **DEVICE AND METHOD FOR
ADAPTING A CONTAINER FOR USE IN A
FLORAL ARRANGEMENT**

Commissioner of Patents and Trademarks
Washington, DC 20231

Examiner: **Andrea Valenti**

Group Art Unit: **3643**

Date: **February 17, 2003**

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APPEAL BRIEF OF APPELLANT

Sir:

The Applicant has filed a timely Notice of Appeal from the action of the Examiner dated September 18, 2002, finally rejecting Claims 5 - 22. The Applicant herein timely files this Brief in accordance with 37 C.F.R. 1.192(a).

I. PARTY IN INTEREST [37 CFR §1.192(c)(1)]

The subject application is not assigned. As such, the Party in Interest is the Applicant.

II. RELATED APPEALS AND INTERFERENCE [37 CFR §1.192(c)(2)]

No other related application is currently subject to an Appeal or Interference.

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III. STATUS OF CLAIMS [37 CFR §1.192(c)(3)]

Claims 5- 22 are pending in this application.

Claims 5 - 22 stand as finally rejected by the Examiner.

IV. STATUS OF THE AMENDMENTS [37 CFR §1.192(c)(4)]

The amendment filed by the Applicant on July 15, 2002 was entered by the Examiner.
No other amendments were filed.

V. SUMMARY OF THE INVENTION [37 CFR §1.192(c)(5)]

The subject application has three pending independent claims, which are Claim 11, Claim 19 and Claim 22.

Claim 11 is an independent claim that sets forth an assembly consisting of a container and an elastomeric cover for that container. (See **preamble of Claim 1**). The claimed assembly includes a container (See **vase 12 in Fig. 1 or vase 22 in Fig. 2**). The container has an open top end of a predetermined maximum width. (See **diameter D2 in Fig. 1**) Also claimed as part of the assembly is an elastomeric cover element (**10 in Figs. 1-3**) that is used to cover the open top end of the container. The elastomeric cover element (**10**) has an unstretched width that is smaller than the maximum width of the container's open top end. (See **width dimension D1 in Fig. 1 and Fig. 2**) (See also *Specification, page 8, lines 22-23 and page 10, lines 1-5*) As such, the cover element (**10**) must be elastically stretched into a stretched width that is greater than the maximum width of open top end of the container (**12 in Fig. 2, 22 in Fig. 2**) to cover the open top end of the container. (See *Specification, page 9, lines 1-4 and page 10, lines 8-12*) A plurality of openings (**20 in Figs. 1-3**) are defined in the cover element (**10**). The openings are used to arrange flowers (**14, Fig. 1**) once the cover element is stretched over the open top end of the container. (See *Summary, page 6, lines 1-8*)

Claim 19 sets forth a method of preparing a vase for a floral arrangement. (*See preamble to Claim 19*) The method includes providing an elastomeric cover (*10 in Fig. 1-3*) that contains a plurality of openings (*20 in Figs. 1-3*). The elastomeric cover (*10*), however, has a width that is less than the maximum width of vase (*12 in Fig. 2, 22 in Fig. 2*) it is to cover. (*See also Specification, page 8, lines 22-23 and page 10, lines 1-5*) The elastomeric cover (*10*) is stretched over the open top of the vase (*12, 22*), wherein the width of the elastomeric cover (*10*) is elastically increased to a width greater than that of the open top of the vase. (*See pre-stretched and stretched diameters of elastomeric cover 10 in Fig. 2*) (*Also see Specification, page 9, lines 1-4 and page 10, lines 8-12*)

Claim 22 is an independent claim that sets forth a floral arrangement cover for a vase. (*See preamble to Claim 22.*) The claimed cover (*10*) has an elastic planar top surface (*16*) in which are defined a plurality of openings (*20*). An elastic peripheral wall (*18*) extends downwardly from the planar top surface (*16*). Both the elastic planar top surface (*18*) and the elastic peripheral wall (*18*) are elastically stretchable to a stretched size where the peripheral wall can receive the open top of the vase therein. (*See specification Page 8, line 16- page 9, line 14*). Once placed around the vase, the elastic planar top spans the open top of the vase and the peripheral wall engages the vase by contracting around its open top. (*See Specification, page 10, lines 15-21*)

VI. ISSUES. [37 CFR §1.192(c)(6)]

The issues presented on review are as follows:

ISSUE 1 - Whether the Examiner erred in finally rejecting Claims 5-7, 9-15 and 17-22 under 35 USC 103(a) as being unpatentable over European Patent Reference No. 0182453 to Turner in view of U.S. Patent No. 3,768,685 to Eckman.

ISSUE 2 - Whether the Examiner erred in finally rejecting Claims 8 and 16 under 35 USC 103(a) as being unpatentable over European Patent Reference No. 0182453 to Turner in view of U.S. Patent No. 2,876,587 to Saks

ISSUE 3 - Whether the Examiner erred in finally rejecting Claims 5-22 because the Examiner has no proper motivation for the combinations made, thereby producing a wrongful hindsight reconstruction.

VII. GROUPING OF CLAIMS. [37 CFR §1.192(c)(7)]

The present application contains three independent claims, which are Claims 11, 19 and 22. Claim 11 sets forth an assembly consisting of a container and a cover. Claim 19 sets forth a method of preparing a vase for a floral arrangement. Lastly, Claim 22 sets forth a floral arrangement cover for a vase. Since the three independent claims claim different applications of the present invention, the three independent claims will be argued separately. Accordingly, it is believed that the three independent claims should be considered separately and should not stand and fall together.

VIII. ARGUMENTS. [37 CFR §1.192(c)(7)]

ISSUE 1 - Whether the Examiner erred in finally rejecting Claims 5-7, 9-15 and 17-22 under 35 USC 103(a) as being unpatentable over European Patent Reference No. 0182453 to Turner in view of U.S. Patent No. 3,768,685 to Eckman.

The rejected claims contain all three independent claims. These claims are Claim 11,

Claim 19 and Claim 22. These claims are fully distinguishable over the combined references, as is explained below.

Claim 11

Claim 11 of the present application sets forth an assembly. The claimed assembly includes a container. The container has an open top end of a predetermined maximum width. Also claimed as part of the assembly is an elastomeric cover element that is used to cover the open top end of the container. The cover element has an unstretched width that is smaller than the maximum width of the container's open top end. As such, the cover element must be elastically stretched into a stretched width that is greater than the maximum width of open top end of the container to cover the open top end of the container. A plurality of openings are defined in the cover element. The openings are used to arrange flowers once the cover element is stretched over the open top end of the container.

The claimed structure of Claim 11 is not disclosed by the Turner or Eckman patents.

The Turner patent discloses an open-mesh cover made from "one-sixteenth inch diameter plastic rods spaced one inch apart and fastened to a second set of such rods having their longitudinal axis at an angle of about 90 degrees". *See Turner page 4, second paragraph.*

In the preferred embodiment of the Turner patent, the open-mesh cover 'is held securely in place by a snap-lock mechanism." *See Turner, page 4, third paragraph.*

It is obvious from the description of Turner, that a static plastic mesh cover is described that is molded to fit only a one sized container. The mesh cover can in no manner be stretched to fit containers of different shapes and sizes. It is therefore clear that the Turner patent does not disclose any type of cover element that is elastically stretched over a vase or any other type of container.

To address this obvious deficiency in the Turner patent, the Examiner cites the Eckman patent. The Eckman patent discloses a vial container having a resilient cap. The cap seals the top of the vial and provides an access hole for a single flower stem. The cap engages a lip edge

that holds the cap in place. *See Fig. 4 of the Eckman patent*. The Eckman patent does not disclose a stretchable elastic cover for a vase that can be stretched around different shaped vases and containers. Rather, the Eckman patent shows a cap designed to engage a lip edge on a vial of a specific shape. The cap is held in place by its internal configurations that receive the lip edge of the vial. The cap is not held in place by being elastically stretched over a vase that is wider than the cap.

In combination, neither the Turner nor the Eckman patent discloses any type of cover for a vase or similar container, where the cover deforms and elastically stretches around the vase, thereby stretching a grid across the opening of the vase for use in floral arrangements.

Claim 11 claims a cover element having an unstretched width that is smaller than the width of the container it is to cover. As such, the cover element must be elastically stretched to a wider width that can receive the top of the container.

Accordingly, it is clear that the Turner and Eckman patents do not disclose the matter contained in Claim 11 of the present application. The 35 USC 103 rejection for Claim 11 and its dependent claims should therefore be withdrawn.

In regard to Claim 12, neither the Turner patents nor the Eckman patent disclose a cover that can be stretched around a non-symmetrical vase opening.

In regard to Claim 15, neither the Turner patent nor the Eckman patent disclose a cover that stretches open its grid structure as it is stretched over a vase.

Claim 19

Claim 19 sets forth a method of preparing a vase for a floral arrangement. The method includes providing an elastomeric cover that contains a plurality of openings. The elastomeric cover, however, has a width that is less than the maximum width of vase it is to cover. The elastomeric cover is stretched over the open top of the vase, wherein the width of said elastomeric cover is elastically increased to a width greater than that of the open top of the vase.

As has been previously stated, the Turner patent does not disclose an elastomeric cover. As such, it does not disclose the method step of providing an elastomeric cover. Furthermore, the Turner patent does not disclose the method step of stretching an undersized cover into a larger shape that can be placed over the open end of a vase. Rather, the Turner patent discloses a plastic wire grid. The wire grid has one set width that does not change.

The Eckman patent discloses a cap that engages a lip edge on the tip of a vial. The Eckman patent does not disclose the method step of stretching an undersized cover into a larger shape that can be placed over a vase.

Accordingly, the combination of Turner and Eckman does not disclose the method of providing an undersized cover and elastically stretching that undersized cover to span the top of a vase. The 35 USC 103 rejection for Claim 19 and its dependent claims should therefore be withdrawn.

Claim 22

Claim 22 is an independent claim that sets forth a floral arrangement cover for a vase. The claimed cover has an elastic planar top surface in which are defined a plurality of openings. An elastic peripheral wall extends downwardly from the planar top surface. Both the elastic planar top and the elastic peripheral wall are elastically stretchable to a stretched size where the peripheral wall can receive the open top of the vase. Once placed around the vase, the elastic planar top spans the open top of the vase and the peripheral wall engages the vase by contracting around its open top.

The Turner patent does not disclose a vase cover with an elastic top surface. The Turner patent does not disclose a vase cover with an elastic peripheral wall. Lastly, the Turner patent does not disclose a vase cover that is stretched over a vase and engages the vase by contracting around the top of the vase.

The Eckman patent discloses a cap that engages a lip edge on the tip of a vial. The Eckman patent does not disclose an undersized vase cover that can be elastically stretch over a

vase, wherein the cover contracts from being stretched and engages the vase.

Accordingly, the combination of Turner and Eckman does not disclose or suggest any undersized vase cover that is elastically stretched over a vase to create a grip pattern for floral arrangements. The 35 USC 103 rejection for Claim 19 and its dependent claims should therefore be withdrawn.

ISSUE 2 - Whether the Examiner erred in finally rejecting Claims 8 and 16 under 35 USC 103(a) as being unpatentable over European Patent Reference No. 0182453 to Turner in view of U.S. Patent No. 2,876,587 to Saks

Claim 6 depends from independent Claim 22. Claim 16 depends from independent Claim 11. The matter contained in independent Claim 6 and independent Claim 22 both differ from the Turner patent for the reasons previously presented.

The Examiner cites the Saks patent to show a flow holding grid that is transparent. However, the Saks patent shows a device that is a solid, rigid piece of plastic. The Saks patent does not address the deficiencies of the Turner patent as applied to the wording of the independent claims. The Saks patent merely shows a plastic flower holder that is made of transparent plastic. The Saks patent makes no disclosure of an elastomeric cover for a vase that is stretched over a vase. Accordingly, the combination of Saks with the Turner patent fails to disclose the matter claimed by the present invention.

ISSUE 7 - Whether the Examiner erred in finally rejecting Claims 5-22 because the Examiner has no proper motivation for the combinations made, thereby producing a wrongful hindsight reconstruction.

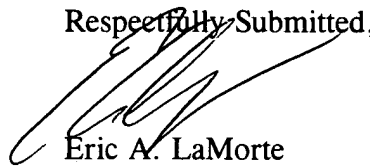
The Examiner's rejection based upon the cited references requires a selective combination of various elements before the references can be applied to the pending claims. The law is clear. When prior art references require selective combination to render the claims of an application obvious, there must be some reason for the combination other than hindsight gleaned from the invention itself. See *Interconnect Planning Corp. v. Feil* 774 F.2d 1138, 227 USPQ 543 (Fed Cir 1985), and *Ashland Oil, Inc.* 776 F.2d 281, 227 USPQ 657 (Fed Cir 1985). Something in the prior art as a whole must suggest the desirability and thus the obviousness of making the combination. See *Lindermann Maschinenfabrik GmbH v. American Hoist and Derrick Co.* 730 F.2d 1452, 221 USPQ 481 (Fed Cir. 1984), and *Uniroyal Inc. v. Rudkin-Wiley Corp.* 5 USPQ 2nd 1434 (1988).

As the court stated in *Uniroyal*, 837 F.2d at 1051, 5 USPQ2nd at 1438, "it is impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention." In regard to the matter set forth in Claims 11, Claim 19 and Claim 22, the prior art cited simply does not disclose any undersized vase cover that elastically stretches over a vase to provide a grid structure across the face of the vase. Since nothing in the cited art suggests what was claimed, the Examiner's combination is without motivation and is wrongful.

CONCLUSION

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §1. 192(c) et seq. The Examiner's 35 U.S.C. §103 rejections are not supported by the cited references. The Board is therefore requested to cause the Examiner to remove the rejection and allow the remaining pending claims.

Respectfully Submitted,



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VII. APPENDIX.

The pending claims stand as follows:

5. The device according to Claim 22, wherein said plurality of openings are symmetrically disposed throughout said planar top surface.
6. The device according to Claim 22, wherein said plurality of openings are arranged in linear rows and columns.
7. The device according to Claim 22, wherein said plurality of openings are slots that enlarge when said planar top surface is stretched.
8. The device according to Claim 22, wherein said planar top surface is translucent.
9. The device according to Claim 22, wherein said planar top surface has a circular peripheral shape.
10. The device according to Claim 22, wherein said planar top surface has a polygonal peripheral shape.
11. An assembly, comprising:
 - a container having an open top end with a predetermined maximum width;
 - an elastomeric cover element for covering said open top end, said cover element having an unstretched width that is smaller than said maximum width of said open top end wherein said cover element must be elastically stretched to a stretched width greater than said maximum width of said open top end to cover said open top end; and
 - a plurality of openings defined in said cover element.

12. The assembly according to Claim 11, wherein said open top end of said container is not symmetrical and said cover element conforms to the open top end of the container when engaged with the open top of the container.

13. The assembly according to Claim 11, wherein said cover element has a planar top surface and a peripheral wall that extends downwardly from said planar top surface.

14. The assembly according to Claim 13, wherein said plurality of openings are arranged in linear rows and columns on said planar top surface.

15. The assembly according to Claim 13, wherein said plurality of openings are slots that enlarge when said cover element is stretched.

16. The assembly according to Claim 11, wherein said cover element is translucent.

17. The assembly according to Claim 11, wherein said cover element has a circular peripheral shape.

18. The assembly according to Claim 11, wherein said cover element has a polygonal peripheral shape.

19. A method of preparing a vase for a floral arrangement, wherein the vase has an open top with a maximum width at least one point, said method comprising the steps of:

providing an elastomeric cover, containing a plurality of openings therein, said elastomeric cover having a width that is less than said maximum width of said vase;

stretching said elastomeric cover over said open top of said vase, wherein said width of said elastomeric cover elastically increases to a width greater than that of

said vase and engages said vase around said open top.

20. The method according to Claim 19, wherein said cover has a planar top surface and a peripheral wall that extends downwardly from said planar top surface, wherein said plurality of openings are arranged in linear rows and columns on said planar top surface.

21. The method according to Claim 19, further including the step of inserting elements of a floral arrangement through said plurality of openings and into said vase.

22. A floral arrangement cover for a vase, wherein the vase has an open top, said cover comprising:

an elastic planar top surface in which are defined a plurality of openings;

an elastic peripheral wall that extends downwardly from said planar top surface, said elastic planar top and said elastic peripheral wall being elastically stretchable to a stretched size where said peripheral wall can receive the open top of the vase therein and said elastic planar top spans the open top of the vase, wherein said peripheral wall engages the vase around the open top by contracting around the open top.